IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4441 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JIVANSINH NAVALSING JADEJA SINCE DECEASED THRO HIS HEIRS

Appearance:

Mr.Sunil Mehta, Advocate, with MR SK BUKHARI, Advocate, for the Petitioner.

MR MUKESH H RATHOD for Respondent Nos. 1-1/9

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 14/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-S.T. Corporation has challenged the order passed by the Labour Court, Rajkot in Reference (LCR) No. 1648 of 1986. By the impugned order, the Labour Court has set aside the order of penalty imposed by the S.T. Corporation, and that penalty of withholding of three increments, with future effect, which was imposed by the Department, was substituted by the Labour Court by ordering withholding of two yearly increments with future effect by the said

order. The Labour Court further ordered that the workman shall be entitled to back wages from 17.4.1984 till he was actually reinstated in service. It is pointed out by the learned Advocate for the petitioner that the workman was actually reinstated on 17th December, 1990 by the S.T. Corporation itself.

During the pendency of this petition, the respondent-workman has died and his heirs are already brought on record by the S.T. Corporation.

The deceased employee was working as a driver in the Rajkot City depot of the S.T. Corporation. He was subjected to departmental enquiry on the ground that he remained absent without leave from 17.4.1984 to 15.9.1984. After holding enquiry, the Disciplinary Authority passed an order of dismissal against the deceased workman.

The said order of dismissal was passed on 11.7.1985. The concerned workman thereafter challenged the said order by way of departmental appeal. The appellate authority partly allowed the said appeal by setting aside the order of dismissal. The Appellate Authority, however, did not award any back wages, and, inflicted the penalty of withholding three increments of the concerned workman with cumulative effect.

It is required to be noted that while the appeal of the concerned workman was pending before the Department, the petitioner had also raised an industrial dispute. However, since, in the meanwhile, the order of dismissal was set aside by the appellate authority, the Labour Court, ultimately, decided the question about inflicting penalty of withholding three increments of the concerned workman with cumulative effect. The Labour Court came to the conclusion that the because of sickness, the concerned workman could not remain present and, therefore, order passed by the appellate authority, withholding three increments of the concerned workman with future effect is on the higher side. Accordingly, the Labour Court interfered with the said penalty order and instead, inflicted the penalty of withholding of two increments with future effect. The Labour Court, set aside the order of the appellate authority and directed reinstatement with back wages.

The S.T. Corporation has filed the present Special Civil Application challenging the said order.

As pointed out earlier, during the pendency of

this petition, the concerned workman had already died on 22nd January, 1998. Mr.Rathod, learned Advocate for the respondent, submitted that since the workman was not keeping good health, he died and, therefore, there is a valid reason for remaining absent at the relevant time. So far as the question of reinstatement is concerned, since the S.T. Corporation has reinstated the concerned workman, even when the reference was pending, in view of the order of the appellate authority, now that question is not required to be considered. Now, since the workman has died, the S.T. Corporation is required to pay whatever retiral dues the heirs are entitled, by calculating the same, and the same shall be given within a period of one month from today. So far as the order of the Labour Court, by which the Labour Court awarded back wages to the concerned workman and reduced the penalty, is concerned, in my view, such order is not required to be interfered with by this Court, as the Labour Court has given cogent reasons for reaching the said conclusion.

On behalf of the petitioner-Corporation, Mr.Sunil Mehta, learned Advocate, submitted that, in the facts and circumstances of the case, the order of full back wages from 17.4.1984 to 17.12.1990 is required to be modified, as, at least, it is proved that the concerned workman remained on unauthorised leave without giving prior report. Ultimately, the learned Advocate for the petitioner left the said question to the Court.

Considering the facts and circumstances of the case and considering the fact that the workman has died and the ultimate benefits will have to be given to the heirs of the deceased and considering the fact that it has been found that the concerned workman, at the relevant time, had not given prior leave report before proceeding on leave, so far as the order granting full back wages for the intervening period from 17.4.1984 to 17.12.1990 is concerned, the said amount is reduced to 60% only. The order of full back wages for the intervening period from 17.4.1984 to 17.12.1990 granted by the Labour Court in the impugned order is accordingly modified to 60% only.

Mr.Rathod, learned Advocate for the respondents, submitted that this Court has directed vide order dated 28.3.1994, that the ad interim relief is granted on condition that the petitioner deposits 25% of the back wages within six weeks from 28.3.1994, and, on such deposit, the respondents were given liberty to withdraw the same. However, according to him, the petitioner did not care to make the said deposit. The question whether

the interim order was complied with by the petitioner-Corporation or not is of no consequence now, as, ultimately, this petition is disposed of finally by this Court.

The petition is accordingly allowed partly. Rule is made absolute accordingly. In view of the final disposal of the petition, ad interim relief granted vide order dated 28.3.1994 is discharged. Whatever benefits the respondents are entitled in view of this judgment, i.e. benefit of 60% back wages, as well as all other retiral dues which the respondents are entitled, be given to the respondents without any further delay. It is held that the concerned workman was deemed to be in continuous service till his death. Whatever benefits the respondents are entitled shall be calculated and paid to the respondents within a period of one month from today.

14th July, 2004 (P.B. Majmudar, J.)

***

(apj)